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C O N F I D E N T I A L SECTION 1 OF 2 USNATO 4513

E.O. 11652: GDS 12-31-79

TAGS: PARM, NATO

SUBJECT: CSCE: NETHERLANDS PROPOSALS ON ACCESSIBILITY OF LITERATURE,
PERSONAL CORRESPONDENCE, AND FULFILMENT OF OBLIGATIONS UNDER
INTERNATIONAL LAW

GENEVA FOR USDEL CSCE

REF: A. USNATO 3980; B. USNATO 4426

1. AT SENIOR POLADS MEETING SEPTEMBER 24, NETHERLANDS REP
CIRCULATED TEXT OF FOLLOWING DOCUMENTS WHICH HE STATED
WOULD BE CIRCULATED SHORTLY IN GENEVA: A) DRAFT EXPLANATORY
NOTE ON ACCESSIBILITY OF WORKS OF LITERATURE, ART, SCIENCE
AND LEARNING. B) EXPLANATORY NOTE ON PERSONAL CORRESPONDENCE,
AND C) EXPLANATORY NOTE ON PRINCIPLES OF FULFILMENT IN GOOD FAITH
OF OBLIGATIONS UNDER INTERNATIONAL LAW. PAPER ON ACCESSIBILITY
OF LITERATURE IS NARRATIVE PRESENTATION OF DRAFT RESOLUTION TRANS-
MITTED REF B, WHILE PAPER ON PERSONAL CORRESPONDENCE IS RE-DRAFT
OF PAPER TRANSMITTED REF A. TEXTS OF DUTCH PAPERS ARE TRANS-
MITTED BELOW.

2. IN PRESENTING PAPER ON ACCESSIBILITY OF LITERATURE,
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NETHERLANDS REP STRESSED THAT WHILE SOVIETS MIGHT OBJECT TO
THIS TYPE OF PROPOSAL, NETHERLANDS AUTHORITIES, INCLUDING
FOREIGN MINISTER, REGARDED IT AS REASONABLE STEP ON ROAD TO
DETENTE. HE ASKED THAT THOSE ALLIES WHO FOUND PAPER TOO

CONTROVERSIAL AT LEAST REFRAIN FROM CRITICIZING IT IN GENEVA. CANADIAN REP WELCOMED DUTCH PROPOSAL AND SUGGESTED THAT PARA 5 BE STRENGTHENED THROUGH ADDITION OF IDEA THAT CITIZENS SHOULD HAVE ACCESS TO LITERARY WORKS AS WELL AS PUBLISHERS HAVING FREE ACCESS TO WRITERS. NETHERLANDS REP SAID HE BELIEVED THIS PROPOSAL WOULD BE ACCEPTABLE TO THE HAGUE. ALTHOUGH MOST OTHER DELEGATIONS WERE WITHOUT INSTRUCTIONS, SEVERAL REPS WELCOMED DUTCH PAPER ON PERSONAL BASIS. ONLY RESERVATION WAS VOICED BY DANISH REP WHO ASKED REHOTORICALLY WHETHER IT WAS WISE TO MAKE PROPOSALS WHICH ALLIES KNEW IN ADVANCE WERE COMPLETELY UNACCEPTABLE TO SOVIETS. THIS COULD, IN DANISH VIEW, STRENGTHEN SOVIET POSITION OF HARDLINE ELEMENTS IN USSR. QUESTION WAS RAISED AS TO HOW DUTCH PLAN TO HANDLE PAPER IN GENEVA AND SEVERAL DELEGATIONS ASKED THAT DUTCH COORDINATE WITH OTHER NATO DELS BEFORE CIRCULATING PAPER IN GENEVA. SPC AGREED THAT OTHER TWO NETHERLANDS PAPERS COULD APPROPRIATED BE DISCUSSED BY ALLIED CSCE DELS.

3. BEGIN TEXT (ACCESSIBILITY OF WORKS OF LITERATURE, ART, SCIENCE AND LEARNING):

1. THE MANDATE ON "COOPERATION IN LITERATURE AND OTHER FIELDS" STATES IN PARA (49) THAT THE COMMITTEE/SUB-COMMITTEE SHALL CONSIDER IN PARTICULAR THE PROMOTION OF FULLER MUTUAL KNOWLEDGE OF AND ACCESS TO ACHIEVEMENTS IN LITERATURE, ART AND OTHER FIELDS OF CULTURAL ACTIVITY.

2. NATURALLY, WRITERS WISH TO HAVE THEIR WORKS PUBLISHED AND READ AS WIDELY AS POSSIBLE, AND THEY SHOULD BE FREE TO EXPRESS THEIR THOUGHTS AND TO RELATE THEIR EXPERIENCES FOR THE BENEFIT OF THE READERS' INFORMATION, AND THUS BE ALLOWED TO CONTRIBUTE TO THEIR OWN COUNTRY'S CULTURE AND THAT OF THE WORLD.

3. ON THE OTHER HAND, THE CONFERENCE SHOULD ESTABLISH THE RIGHT OF ALL INDIVIDUALS TO HAVE FREE ACCESS TO WRITTEN WORKS OF BOTH FICTION AND NON-FICTION, REGARDLESS OF WHETHER THESE EXIST IN THE SHAPE OF BOOKS, PERIODICALS OR NEWSPAPERS, OR IN ANY CONFIDENTIAL

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OTHER OBJECTIVE FORM.

4. THE ABOVE IS IN CONFORMITY WITH THE PREAMBLE TO THE UNIVERSAL COPYRIGHT CONVENTION, WHICH IS ALREADY BINDING ON A LARGE NUMBER OF THE PARTICIPATING STATES, AND WHICH DECLARES THAT THE COPYRIGHT SYSTEM ESTABLISHED THEREIN "WILL ENSURE RESPECT FOR THE RIGHTS OF THE INDIVIDUAL AND ENCOURAGE THE DEVELOPMENT OF LITERATURE, SCIENCE AND THE ARTS" AND "WILL FACILITATE A WIDER DISSEMINATION OF WORKS OF THE HUMAN MIND".

5. IN CASES WHERE A MANUSCRIPT STANDS A BETTER CHANCE OF BEING PUBLISHED OUTSIDE THE COUNTRY WHERE IT WAS WRITTEN THAN WITHIN, PUBLISHERS SHOULD BE FREE TO CONTACT THE WRITER DIRECTLY WITH

A VIEW TO PUBLISHING HIS WORK, WHICH MIGHT OTHERWISE BE WASTED.

IT GOES WITHOUT SAYING THAT THE ARRANGEMENTS BETWEEN PUBLISHER AND WRITER WITH REGARD TO FIXATION AND PAYMENT OF FEES, WHICH SHOULD BE EQUITABLE ACCORDING TO INTERNATIONAL PRACTICE, WOULD TAKE PLACE WITHIN THE EXISTING LEGAL FRAMEWORK.
END TEXT

4. BEGIN TEXT (HUMAN CONTACTS: PERSONAL CORRESPONDENCE):

1. THE MANDATE ON "HUMAN CONTACTS" (FINAL RECOMMENDATIONS OF THE HELSINKI CONSULTATIONS, PARA 45) STATES THAT THE COMMITTEE/SUB-COMMITTEE SHALL PREPARE PROPOSALS TO FACILITATE CONTACTS AMONG PERSONS.

2. ALTHOUGH, WHEN CONTEMPLATING "CONTACTS" ONE MAY FIRST THINK OF DIRECT CONTACTS, I.E. MEETINGS BETWEEN PERSONS, IT MUST NOT BE OVERLOOKED THAT SUCH CONTACTS CAN NEITHER BE CONTINUAL NOR UNIVERSAL. THERE IS A LIMIT TO THE TIME A PERSON CAN SPEND TRAVELLING, QUITE APART FROM THE FUNDS HE MAY BE IN A POSITION TO USE FOR THIS PURPOSE. IF "CONTACTS" WAS APPLIED TO MEETINGS ONLY, THEN THIS INTERPRETATION WOULD BE VERY RESTRICTIVE INDEED.

3. ONE WAY OF CONTACTING PERSONS WHO ARE NOT PHYSICALLY PRESENT IS MAKING A TELEPHONE CALL. IN THAT WAY ONE OBTAINS FIRST-HAND INFORMATION FROM OTHER PEOPLE AT VERY SHORT NOTICE. INTERNATIONAL TELEPHONE CALLS ARE, HOWEVER, RATHER EXPENSIVE, AND NOT ALL CITIZENS CONFIDENTIAL

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COULD AFFORD REGULAR CALLS TO THEIR FRIENDS AND RELATIONS IN OTHER COUNTRIES. YET, THOSE WHO ARE WILLING TO FACE THE COST SHOULD BE FREE TO DO SO.

4. THE OBVIOUS MANNER IN WHICH ANYBODY WHO CAN READ AND WRITE CAN KEEP UP AND ESTABLISH CONTACT WITH PEOPLE IN OTHER COUNTRIES IS LETTER WRITING. THOUGH LESS DIRECT THAN A MEETING OR A TELEPHONE CONVERSATION, IT CAN BE AN EFFECTIVE MEANS OF PERSONAL COMMUNICATION.

5. FOR PERSONAL CORRESPONDENCE TO BE EFFECTIVE, HOWEVER, THERE ARE CERTAIN CONDITIONS. FIRST, THE WRITER SHOULD CONFIDENT THAT HIS LETTER REACHES ITS DESTINATION WITHOUT UNDUE DELAY. IF THERE IS A REAL POSSIBILITY THAT THE LETTER WILL NOT BE RECEIVED BY ITS ADDRESSEE, OR THAT IT WILL NEED A LONG TIME TO GET THERE, MANY POTENTIAL WRITERS WILL NOT MAKE THE EFFORT OF WRITING ONE. SECOND, ONE SHOULD HAVE REASON TO ASSUME THAT THE FIRST PERSON TO READ THE LETTER IS THE ADDRESSEE HIMSELF. JUST AS PERSONAL MEETINGS WILL BE THE MOST EFFECTIVE IF HELD PRIVATELY, OR ATTENDED ONLY BY PEOPLE OF THE PARTICIPANTS' OWN CHOICE, CORRESPONDENCE WILL ONLY SERVE ITS PURPOSE AS AN EFFECTIVE SUBSTITUTE FOR DIRECT CONTACTS IF THE WRITERS CAN BE ASSURED THAT THERE IS NO INTERFERENCE WITH THEIR LETTERS.

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6. IF THESE PRINCIPLES COULD BE CONFIRMED BY THE CONFERENCE,
THIS WOULD POINT TOWARD THE CONCRETE RESULTS THAT OUR CITIZENS EXPECT
:

A LOWERING OF THE BARRIERS THAT STILL STAND IN THE WAY OF FREER
MOVEMENT AND CONTACT AMONG PERSONS IN THE PARTICIPATING STATES.

END TEXT

5. BEGIN TEXT (THE PRINCIPLES OF THE FULFILMENT IN GOOD FAITH
OF OBLIGATIONS UNDER INTERNATIONAL LAW):

1. THERE DOES NOT SEEM TO BE ANY NEED TO ELABORATE HERE ON
THE IMPORTANCE OF THE PRINCIPLE OF THE FULFILMENT IN GOOD FAITH
OF OBLIGATIONS UNDER INTERNATIONAL LAW. IT IS ABUNDANTLY CLEAR
THAT A FAILURE ON THE PART OF PARTICIPATING STATES TO COMPLY
WITH THIS PRINCIPLE MAY GIVE RISE TO FRICTION BETWEEN THEM WHICH
WOULD BE HARMFUL TO THE PROCESS OF STRENGTHENING SECURITY IN
EUROPE.

2. WITHIN THE COMMUNITY OF A STATE THE NEED FOR RESPECT FOR THE
RULES OF ITS NATIONAL LAW HAS BEEN GENERALLY ACCEPTED. IN THE
SAME WAY IT HAS BECOME GENERALLY ACCEPTED THAT IN THE INTERNA-
TIONAL COMMUNITY OF STATES THE RULES OF INTERNATIONAL LAW HAVE
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TO BE RESPECTED BY THE MEMBERS OF THAT COMMUNITY WHO ARE EXPTECTED
TO FULFIL IN GOOD FAITH THE OBLIGATIONS DERIVING FROM THOSE
RULES.

3. IT SHOULD BE NOTED THAT THE PRESENT PRINCIPLE AS TO ITS CONTENTS CLEARLY GOES BEYOND THE TRADITIONAL "PACTA SUNT SERVANDA" PRINCIPLE. THE OBLIGATIONS REFERRED TO HERE, DERIVE NOT ONLY FROM UNDERTAKINGS BY STATES VIS-A-VIS OTHER STATES EITHER IN A BILATERAL OR A MULTILATERAL FRAMEWORK, BUT ALSO INCLUDE THOSE ARISING FROM GENERALLY RECOGNISED PRINCIPLES AND RULES OF INTERNATIONAL LAW.

4. IT GOES WITHOUT SAYING THAT THE PRESENT PRINCIPLE ONLY REFERS TO THOSE OBLIGATIONS THAT ARE IN CONFORMITY WITH THE CHARTER OF THE UNITED NATIONS. NO STATE CAN BE HELD TO FULFIL AN OBLIGATION CONTRARY TO THE CHARTER. IN SO FAR AS THE PARTICIPATING STATES ARE MEMBERS OF THE U.N. THEY ARE BOUND BY ARTICLE 103 OF THE CHARTER WHICH READS: "IN THE EVENT OF CONFLICT BETWEEN THE OBLIGATIONS OF THE MEMBERS OF THE UNITED NATIONS UNDER THE PRESENT CHARTER AND THEIR OBLIGATIONS UNDER ANY OTHER INTERNATIONAL AGREEMENT, THEIR OBLIGATIONS UNDER THE PRESENT CHARTER SHALL PREVAIL".

THE FOLLOWING TEXT IS SUGGESTED FOR INCLUSION IN THE DOCUMENT ON PRINCIPLES TO BE SUBMITTED DURING THE THIRD PHASE OF THE C.S.C.E.: "EACH STATE WILL FULFIL IN GOOD FAITH

A) THE OBLIGATIONS DERIVING FROM THE CHARTER OF THE UNITED NATIONS

B) ITS OBLIGATIONS UNDER THE GENERALLY RECOGNIZED PRINCIPLES AND RULES OF INTERNATIONAL LAW;

C) ITS OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS VALID UNDER THE CHARTER OF THE U.N. THE LATTER SHALL PREVAIL. NO STATE CAN BE HELD TO FULFIL AN OBLIGATION CONTRARY TO THE CHARTER".

END TEXT

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